IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.106 OF 2007
IN
NOTICE OF MOTION NO.964 OF 2006
IN
L.C.SUIT NO.1136 OF 2006
WITH
CIVIL APPLICATION NO.156 OF 2007

M/s.Savannah Leisure Pvt.Ltd. & Anr....Appellants

Versus

The Municipal Corpn. of Gr.Bombay

& Anr. ...Respondents

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Mr.C.U.Singh with Mr.Soma Singh i/b Bobby Malhotra for Appellants.

Mrs.Geeta Joglekar for Resopndent No.1.

Mrs.Veena Thadhani with Mrs.Sushma Singh i/b Vishal Jhodhani for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

MARCH 7, 2007.

P.C.

1. Heard Counsel for the parties. Perused the relevant material on record.

2. After examining the relevant documents, I am in agreement with the conclusion reached by the Trial Court that it was not a case for grant of interim relief as prayed. The action which has reached up to this Court emanates from the show-cause notice issued by the Corporation under Section 351 of the Mumbai Municipal Corporation Act. Two show-cause notices under Section 351 came to be issued to the Appellants in respect of the suit structure in succession. The first is dated 4th January 2006 and again on 17th January 2006. The unauthorised structure has been referred to in the schedule of the notice. The description of the unauthorised work in both the notices is given as follows:

> "Unauthorised construction of flooring deck, servant room, toilets in open space, shed, electric meter box and extension to existing structure as per sketch overleaf."

3. After going through the relevant documents pressed into service, I am in agreement with the opinion recorded by the Trial Court that the

documents do not establish the position that the questioned structures referred to in the suit notice were erected after taking prior permission, nor the documents would assist the Court to infer that the unauthorised work was protected as it was in existence prior to the datum line.

4. The Appellants may be right only to the extent that electric meter box cannot be described as unauthorised work as that is only a facility put up for beneficial enjoyment of the property and is necessary to preserve the electric meters. Besides, no prior permission for installation of electric meter box may be required under Section 342 of the Act.

5. However, insofar as other unauthorised work is concerned, the opinion of the Trial Court will have to be upheld. Some controversy is raised in relation to the shed which is described in the rough sketch as shed with bamboo and tarpaulin. According to the Appellants, it is a temporary structure and does not require prior permission of the Corporation. On the other hand, according to

the Corporation, the structure is utilised for some commercial activity by the Appellants, which will have to be considered as consuming extra FSI without taking prior permission. Those aspects will have to be considered by the appropriate authority in the proposed application to be made by the Appellants for regularisation of the other unauthorised work including that of the shed in question.

6. While dismissing this Appeal, however, in the interest of justice, the Appellants can be given opportunity to apply to the Competent Authority for regularisation of the unauthorised work if the same can be protected and permitted by law. The Appellants shall make application to the Executive Engineer, Building Proposal, Western Suburbs within four weeks from today for regularisation of the unauthorised work referred to in the suit notice except the electric meter box. If such application is made, the Competent Authority shall decide the same on its own merits, uninfluenced by the observations made in the impugned Judgment or for that matter, the present

order. In other words, the Competent Authority shall examine the said Application strictly according to the norms and parameters permissible by law. All questions in that behalf are left open.

7. The Competent Authority before passing appropriate orders on such application, may give opportunity of hearing to the owner and to put her stand-point in the said proceedings. Those questions also will have to be considered by the Competent Authority on its own merits.

8. The Competent Authority shall finally dispose of the proposed representation for regularisation of the unauthorised work not later than ten weeks from today. Till the said decision is taken and communicated to the Appellants and if the decision is adverse, for a further period of two weeks from the date of communication to enable the Appellants to take up the matter before appropriate forum, Corporation shall not take any precipitative action against the disputed

structure.

9. The Appellants undertake before this Court through Counsel that the shed as shown in the suit notice, will be maintained in the same form, namely, bamboo and tarpaulins. The Appellants admit the correctness of the description of the shed structure as noted in the suit notice.

10. Appeal and the companion Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.